82-579

Office-Supreme Court, U.S.
FILED
DEC 9 1982
ALEXANDER L. STEVAS
CLERK

No. 82-589

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

STATE OF FLORIDA,

Petitioner,

-vs-

COUNTY OF MONROE, NEW YORK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

REPLY BRIEF FOR PETITIONER

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TABLE OF CONTENTS

	PAGE
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
ARGUMENT	
I.	
18 U.S.C., SECTION 3195, OF THE FEDERAL EXTRADITION ACT, DOES NOT CREATE A FEDERAL CAUSE OF ACTION AGAINST THE DEMANDING AUTHORITY FOR THE EXPENSES OF EXTRADITION IN A POLITICAL SUBDIVISION OF A STATE.	1
II.	
THE CAUSE OF ACTION IS BARRED BY THE ELEVENTH AMENDMENT.	7

TABLE OF CITATIONS

Cases	Page(s)
Cort v. Ash, 422 U.S. 66 (1975)	1, 3, 4, 6
New Jersey v. New York, 345 U.S. 369 (19)	7
Others	
Section 3195	1, 2, 3, 4, 8
18 U.S.C., Section 3195	1
Attorney General Opinion 059-177	9

ARGUMENT

I. 18 U.S.C., SECTION 3195, OF THE FEDERAL EXTRADITION ACT, DOES NOT CREATE A FEDERAL CAUSE OF ACTION AGAINST THE DEMANDING AUTHORITY FOR THE EXPENSES OF EXTRADITION IN A POLITICAL SUBDIVISION OF A STATE.

At the heart of Respondent's argument on this point is their insistence that the Federal Extradition Act (hereinafter referred to as the "Act"), 18 U.S.C. 3195, creates a cause of action in a political subdivision for expenses incurred in the process of extradition. However, Respondent's reliance upon Cort v. Ash, 422 U.S. 66 (1975) and its four points is misinterpeted.

Under the first criteria, the plaintiff must be one of the class for whose benefit the statute was enacted. The County of Monroe, New York is not one of the class.

Section 3195 of the Act says the demanding authority shall pay for the

expenses of extradition. While this section is silent as to whom such payment is to be made, the Act speaks about the duties and benefits that arise between the "executive authorities" of the demanding and asylum states. Since the Act speaks strickly about states and their duties, it would only be a logical reading of Section 3195 that the obligation by the return of the fugitive and the resulting costs be between the states so involved.

When Congress passed this law, they left the actual procedures of apprehension and transmission of a fugitive up to the States. How the states themselves complied with the Act was to be decided among themselves. A state could chose to have either local officials or state officials apprehend the fugitive. Congress only sought uniformity and compliance with the provisions of the Act. It would be pure

speculation to believe that not including the words "executive authority" in Section 3195 was deliberate and Congress expected the demanding state to pay the expenses of extradition to just anyone who presented a bill.

Furthermore, an avenue is open to the Respondent they have not even tried yet. While they may not be able to sue the State of New York to have the State pay for the incurred expenses, there is nothing prohibiting the Respondent from requesting a state court from ordering the State of New York to take the Respondent's claim for expenses and present it to the proper officials in the State of Florida. This would require no expenditure of funds, only that the asylum state present the total expenses to the demanding state.

The second criteria of Cort v. Ash is whether there is any legislative intent to

create a remedy or to deny one. There can be no doubt that Section 3195 creates a remedy, but does that remedy inure to a political subdivision? The answer to that question is no. The Act was passed by Congress to insure uniformity and cooperation between the states in the process of extradition. The fact that Monroe County may have a complaint over expenses with the State of New York is an internal state problem. The Governor of New York had a duty to seize the fugitive and deliver him up to Florida, thus any remedy under the Act inures solely to the State of New York. Consequently the second criterion of Cort v. Ash is not found in this case.

Whether there is an implied remedy under the Act is the third criterion of Cort. Under the Extradition Act, no implied remedy exists for the Respondent.

The Act has always dealt with the obligations of the states. There is a duty to return a fugitive and a corresponding duty to pay for the expenses incurred in the return of the fugitive. The duties have always fallen on the states, as intended by the Act. No political subdivision is under any duty imposed by the Act. None can be implied. Their only duty is to the executive authority of their state who orders them to assist him in the return of a fugitive. Since there is no expressed or implied duty under the Act, there can be no implied remedy under it. The Respondent must either look for payment from the person who ordered them to act or have that same person seek the expenses from the demanding state in their stead.

Under the fourth criterion, the conflict between Monroe County, the agency ordered by the Governor to arrest and hold

the fugitive, and the State of New York, is one traditionally relegated to state law. It is a concern of the State of New York to see that its laws and orders to political subdivisions are obeyed. Such state internal matters have traditionally not been part of the federal law. What is of concern to federal law is that, between the states, the extradition process is followed. Since the issue of payment of expenses incurred by a political subdivision at the order of the state is a state concern, the fourth criteria of Cort is not met.

It is clear that all of the four criteria of Cort v. Ash have not been met in this case and a private cause of action does not rest in Monroe County against the State of Florida.

II. THE CAUSE OF ACTION IS BARRED BY THE ELEVENTH AMENDMENT.

Respondents begin by saying that they should be allowed to sue Florida since they have a compelling interest, citing New Jersey v. New York 345 U.S. 369 (1950).

In this case, the Respondent does not have a compelling interest. Their interest arises out of its performance of a duty, not imposed upon it by federal statute, but imposed on it by New York law. Respondent was ordered by the Governor of New York to assist him in the return a fugitive. Under the Act, Florida had no right whatsoever of going directly to Monroe County and demand the return of the fugitive. Only the executive authority of the asylum state can order his political subdivisions to respond.

The Eleventh Amendment will not invoke an injustice in this case. Monroe County

must have the State of New York request from Florida reimbursement for the expenses incurred by Monroe County. If Florida refuses to pay the State of New York, then and only then, can New York sue Florida in this Court under its original jurisdiction.

Contrary to Respondent's assertion, Florida has not failed to honor its obligation. It has never been asked by the proper party, the State of New York, to pay for any expenses incurred in the return of the fugitive. Florida fully intends to comply with the statutory provisions of Section 3195 of the Act when New York submits the list of expenditions to the Governor of Florida. Florida has been on notice that if it used the act it may be required to pay the expenses involved, but only those expenses incurred by the the executive authorities of the asylum state.

Furthermore, this position is not in opposition with Attorney General Opinion 059-177. In that Opinion the Attorney General of Florida said it was proper for the sheriff to pass his expenses incurred in the extradition process on to the demanding state. That is still the policy of Florida. However, the Opinion did not address the issue faced here, that is, the sending of an expense voucher directly to demanding state. It is the position of this State that expenses incurred by Florida political subdivisions in the extradition process must be directed through the Florida Governor's office so that he may present the executive authority of the demanding state with the bill. That is the same procedure we request in this case. Only the State of New York may present its own and its political subdivisions' vouchers for extradition

expenses to the State of Florida. All local subdivisions must act through the executive authority of their respective state.

Respectfully submitted,

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